

REMARKS

In the Office Action mailed on July 22, 2009, claims 1-3, 5-12, 14-21, and 25-33 were rejected.

Interview Summary

Applicants' Representative, Andrew DeMaster (Reg. No. 57,325), appreciates the Examiner's time in discussing the above-identified application on October 2, 2009. In the Interview, the teachings of both U.S. 5,759,653 ("Collette") and U.S. 5,034,252 ("Nilsson") were discussed.

Two possible amendments were discussed regarding independent claim 31:

- (i) the addition of a filling step (f) as proposed by the Examiner; and
- (ii) amending claim 31 such that it recites filling a container to activate the container, wherein the container has been made by the process recited in claim 31.

The Examiner expressed that both of the above amendments would overcome the instant rejections because Nilsson teaches activation through aging rather than activation by filling. With regards to amendment (ii) above, the Examiner noted that the steps used to make the bottle would likely be interpreted as product-by-process limitations.

The teachings of Collette were also discussed with regards to independent claim 1 and activation of the Collette container. The Examiner suggested that a declaration under 37 CFR 1.132 may be useful to elucidate when the Collette article is activated.

Claim Amendments

With this Amendment, claim 31 has been amended to recite filling a container with an aqueous product to activate an oxygen scavenging property of the plastic

container. This feature is fully supported by the application as filed and does not introduce any new matter.¹

35 U.S.C. 103(a) Rejections

A. Collette

Claims 1-4, 6-15, 17-21, and 25-30 stand rejected as being obvious over Collette (US 5,759,653).

1. Independent Claim 1

Independent claim 1 recites a method for making a container that is stable during unfilled storage and has a barrier layer with an oxygen scavenging property that is activated after filling the container with an aqueous fluid. In contrast, Collette teaches a multilayer container made from an oxygen scavenging material that is activated prior to filling the container with product.² Collette does not include any disclosure of a method for forming a container having an oxygen scavenging layer that is not already activated prior to product filling. Further support of Applicants' position is found in the Declaration of inventor Paul Share filed herewith.

Thus, for the foregoing reasons, it is respectfully submitted that claims 1-3, 5-12, 14, 15, 17-21, 25-26, and 29-30 are neither anticipated nor rendered obvious by Collette.

2. Independent Claim 27

Independent claim 27 stands rejected as being obvious over Collette. It is respectfully submitted that independent claim 27 is allowable for the same reasons as discussed above with regards to independent claim 1. In particular, Collette teaches a method for forming a container having a scavenging layer that is inherently activated during production before filling and does not teach any method for forming a

¹ See, e.g., Paragraphs 28, 38, and 98 of the instant application.

² That the Collette scavenger layer is already activated prior to product filling has been discussed extensively by Applicants on the record. See, e.g., Appendix "A" of Applicants' Response dated November 17, 2009, which lists passages of Collette that demonstrate that the Collette scavenger layer is activated prior to product filling.

container that is not already activated prior to filling. (As discussed above with regards to claim 1, further support of Applicants' position is found in the attached Declaration.) Thus, Collette does not teach a method for forming a container that has the properties recited in clause (f) of claim 27. It is therefore submitted that independent claim 27 and dependent claim 28 are allowable over Collette.

B. Nilsson in view of Collette

Claims 31-33 stand rejected as being obvious over Nilsson (U.S. 5,034,252) in view of Collette. The Office Action asserts that Nilsson discloses all of the features of independent claim 31 (prior to the instant amendment), but is silent to the preblend process of step (a) and mixing the preblend with the base polyester. To overcome these deficiencies, the Office Action asserts that it would have been obvious to incorporate the masterbatch method of Collette into that of Nilsson to achieve improved mixing of the constituent materials. Applicants respectfully traverse this assertion.

In order to expedite prosecution, independent claim 31 has been amended to recite the step of filling a container with an aqueous product to activate an oxygen scavenging property of the plastic container. As acknowledged by the Patent Office in both the Interview and the previous Office Action at page 10, item d, Nilsson teaches aging the unfilled container to achieve activation and does not teach activation through filling. Therefore, even *arguendo* if the proposed combination of Nilsson in view of Collette were to be made³, the resulting combination would not include the step of filling a container with an aqueous product to activate an oxygen scavenging property of the plastic container. Thus, it is respectfully submitted that independent claim 31 is allowable over the cited references.

³ For the reasons already of record, Applicants traverse the assertion that a skilled artisan would have been motivated to make the proposed combination.

CONCLUSION

In view of the foregoing, all of pending claims 1-3, 5-12, 14-21, and 25-33 are in condition for allowance. Reconsideration and prompt allowance of all pending claims is respectfully requested. The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 50-2070.

Respectfully submitted,

VALSPAR SOURCING, INC.

Electronically filed:
October 21, 2009

By: /Andrew A. DeMaster/
Andrew A. DeMaster, Reg. No. 57326
PO Box 1461
Minneapolis, MN 55440-1461
Telephone: (612) 851-7281
Fax: (612) 486-7979